

**CONTRACT #2**  
**RFS # N/A**

**Tennessee Board of Regents**  
**University of Memphis**

**VENDOR:**  
**NIKE USA, Inc.**



## Tennessee Board of Regents

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833  
(615) 366-4400 FAX (615) 366-4464

November 21, 2008

Ms. Leni S. Chick  
Fiscal Analyst  
Rachel Jackson Building, 8<sup>th</sup> Floor  
Nashville, TN 37243

RECEIVED  
NOV 21 2008  
FISCAL REVIEW

Dear Ms. Chick:

Enclosed please find an Agreement between the University of Memphis and NIKE USA, Inc. providing for apparel, accessories, and footwear for each sponsored intercollegiate athletics program, support personnel, and support programs. Please note that the term of this Agreement shall begin upon execution by both parties.

Per Fiscal Review's request to see non-competitive agreements/amendments, this contract must be approved by the Committee. Although a Request for Proposal (RFP) process was completed for this Agreement, there are non-competitive provisions in the document that would require approval by the Committee. **Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed.** If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Angela A. Gregory  
Director of Purchasing and Contracts

cc: Charles Manning  
Bob Adams  
Sheri Lipman, UOM

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University  
Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College  
Cleveland State Community College • Columbia State Community College • Dyersburg State Community College  
Jackson State Community College • Motlow State Community College • Pellissippi State Technical Community College  
Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College  
Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College  
The Tennessee Technology Centers

# Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Sheri Lipman, University Counsel	*Contact Phone:	901-678-5496
*Contract Number:		*RFS Number:	
*Original Contract Begin Date:	Upon execution by both parties	*Current End Date:	60 months after start date
Current Request Amendment Number: <i>(if applicable)</i>			
Proposed Amendment Effective Date: <i>(if applicable)</i>			
*Department Submitting:		University of Memphis	
*Division:		Athletics Department	
*Date Submitted:		11/20/2008	
*Submitted Within Sixty (60) days:		No	
<i>If not, explain:</i>		As a result of the size and complexity of the contract, negotiations with vendor took longer to accomplish. Additionally, the start of the basketball season necessitates approval as quickly as possible.	
*Contract Vendor Name:		NIKE USA, Inc.	
*Current Maximum Liability:		Revenue (\$11,300,000)	
*Current Contract Allocation by Fiscal Year: Revenue <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2009	FY: 2010	FY: 2011	FY: 2012
FY: 2013	FY: 2014	FY: 2015	FY: 2016
\$(2,650,000)	\$(2,150,000)	\$(2,150,000)	\$(2,150,000)
\$(2,150,000)	\$(2,150,000)	\$(2,150,000)	\$(2,150,000)
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY:	FY:	FY:	FY:
FY: 2009	FY: 2010	FY: 2011	FY: 2012
FY: 2013	FY: 2014	FY: 2015	FY: 2016
\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A	
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A	
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A	
*Contract Funding Source/Amount:	State:		Federal:

Supplemental Documentation Required for  
Fiscal Review Committee

Interdepartmental:		Other:	Revenue (11,300,000)
If "other" please define:		Revenue – product and monetary contribution	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A			
Method of Original Award: <i>(if applicable)</i>		Competitive	



THE UNIVERSITY OF  
**MEMPHIS**®

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## MEMORANDUM

TO: State Fiscal Review subcommittee 52

FROM: Sheri Lipman, University Counsel, University of Memphis

RE: Explanation of proposed contract between the University of Memphis and NIKE, USA, Inc.

DATE: November 19, 2008

Historically, the University of Memphis Athletic Department has obtained some sponsorship support from athletic apparel and footwear manufacturers for certain of our athletic programs. Specifically, the men's basketball program has typically been sponsored by a company which would provide all necessary product, and the football program has received some product and been provided other product at discounted rates. In addition, our women's basketball, baseball, softball, and golf programs have had more limited partial product arrangements. The value of the sponsorships agreements for product previously entered into by the University and/or its coaches is approximately \$250,000 per year. There have also been some cash contributions to individual coaches under these agreements, but that has been limited with the exception of our head men's basketball coach.

On July 1, 2008, the University issued a Request for Proposals, seeking a five year sponsorship arrangement with an athletic apparel and footwear manufacturer under which athletic product would be provided for all university athletic teams. In response, NIKE has proposed a contract which is rare for non-BCS schools. The provisions include:

1. \$1,500,000 in product allotment per year, with potential rollover amounts of \$200,000 in the first year and \$100,000 in each year thereafter;
2. Total cash payments of, on average per year, \$760,000;
3. Sponsorship of the Tiger Athletic Classic (a golf tournament fundraiser for the Tiger Scholarship Fund);
4. 11% retail licensing royalty for authentic competition apparel and replica jerseys, which they would get an exclusive right to manufacturer;

5. 10% retail licensing royalty for all other items manufactured (our current rate is 9%);

Under NIKE's economic model, two provisions which could be considered to be non-competitive are critical, but, to our knowledge, they are also industry standard clauses:

1. Right of First Dealing until 6 months prior to completion of this agreement: If we reach an agreement with Nike for an extension of this contract during the first dealing period (which ends 6 months prior to the conclusion of the contract), we will extend this contract without going out for bid again. That agreement, however, is subject to review by this committee; and
2. Right of First Refusal for 90 days after the completion of the contract: If we issue a new bid any time between the end of the First Dealing period (6 months prior to completion of the term) and 90 days after the completion of the contract, Nike has the right to "match or better the material, measurable, and matchable terms" of the best bid we get.

Because the Right of First Refusal allows NIKE to match the best bid without being subject to further approval by this subcommittee, we are seeking approval to include this provision in the contract now. Without this provision, Nike has said that they will not agree to this contract. However, because this contract provides for at least \$7,500,000 in product, and as much as \$8,100,000 if all rollover amounts are used, as well as \$3,800,000 in cash over five years, as opposed to the approximately \$1,250,000 in product we would have been receiving, the business justification for this contract is overwhelming. In addition, because the provision still allows us to retain a quality product for our athletic programs if NIKE were to match another proposal, we are quite comfortable with this provision. Finally, even under the right of first refusal, although we do not anticipate taking advantage of this flexibility, we could mitigate the effectiveness of the provision by simply delaying the issue of a new RFP for 90 days.

Unfortunately, we are not submitting this contract for approval 60 days before the effective date, and we are requesting that it be effective upon your approval. The reason for this shortened time frame is two-fold. First, the negotiation of the contract took longer than expected, due partly to the University's request for additional consideration beyond the initial offer (most of which we received) and due partly to the complicated nature of the transaction. In addition, we request an immediate effective date because, with the start of this basketball season, our men's basketball team has already made the transition to Nike apparel and footwear. Although Nike understood the risk it was taking by providing the product before the contract was approved, we would like to provide them the security they deserve for taking this risk.

Thank you for your consideration, and we are happy to provide any additional information you need.

# REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #		
2) State Agency Name :	University of Memphis	
3) Service Caption :	Athletic apparel & footwear, and monetary contribution	
4) Proposed Contractor :	NIKE USA, Inc	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	Upon execution by both parties	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	Not to exceed 60 months after start date	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	Revenue \$11,300,000	
8) Approval Criteria : (select one)	<input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	Athletic apparel & footwear, and monetary contribution for the University of Memphis Athletics Program	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	Obtain an all-sports revenue contract with one company to supply apparel & footwear product for each of the University's 18 varsity teams, along with a monetary contribution for the University's Athletic Program. A five-year revenue producing contract in the amount of \$11.3 million is in the best interest of the University of Memphis and the State of Tennessee.	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	Yes, for some sports (men's basketball and football, and, to a much more limited extent, women's basketball, baseball, softball and golf), in accordance with individual Coach's sport-specific contracts	
12) Name & Address of the Proposed Contractor's Principal Owner(s) : ( <u>not</u> required if proposed contractor is a state education institution)	NIKE USA, Inc.; One Bowerman Drive; Beaverton, Oregon 97005	
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :		



Company has been in business since 1964; 44 years

**14) Documentation of Office for Information Resources Endorsement :**

(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**15) Documentation of Department of Personnel Endorsement :**

(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**16) Documentation of State Architect Endorsement :**

(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

Based upon a competitively bid process, NIKE was the selected contractor for award of the contract; however, NIKE included a potentially non-competitive provision in the contract. The University is requesting approval to include the industry-standard provision in order to secure the contract.

**18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :**

(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Based upon an industry standard, NIKE included a potentially non-competitive provision that is necessary to finalize the overall revenue contract. The non-competitive provision includes flexibility for the University by allowing the provision to expire after 90 days before a new bid is issued.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

Agency Head Signature

Date

Approved

Date

Charles W. Manning, Chancellor

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>				<b>Contract #</b>			
<b>State Agency</b>				<b>State Agency Division</b>			
University of Memphis				Athletics Department			
<b>Contractor Name</b>				<b>Contractor ID # (FEIN or SSN)</b>			
NIKE USA, Inc.				<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 931243023			
<b>Service Description</b>							
Revenue producing contract for athletic apparel and footwear product, along with monetary contribution							
<b>Contract BEGIN Date</b>		<b>Contract END Date</b>		<b>Subrecipient or Vendor?</b>		<b>CFDA #</b>	
upon execution by both parties		60 months after start date		Vendor			
<b>Mark Each TRUE Statement</b>							
<input type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
<b>Allotment Code</b>		<b>Cost Center</b>		<b>Object Code</b>		<b>Fund</b>	
332.74		711100		58505		112000	
<b>Funding Grant Code</b>		<b>Funding Subgrant Code</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>		
2009				\$ (2,660,000.00)	\$ (2,660,000.00)		
2010				\$ (2,160,000.00)	\$ (2,160,000.00)		
2011				\$ (2,160,000.00)	\$ (2,160,000.00)		
2012				\$ (2,160,000.00)	\$ (2,160,000.00)		
2013				\$ (2,160,000.00)	\$ (2,160,000.00)		
					\$ -		
<b>TOTAL:</b>	\$ -	\$ -	\$ -	\$ (11,300,000.00)	\$ (11,300,000.00)		
<b>— COMPLETE FOR AMENDMENTS ONLY —</b>				<b>State Agency Fiscal Contact &amp; Telephone #</b>			
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	David Zettergren, Interim VP, Business & Finance; 901-678-2121				
			State Agency Budget Officer Approval				
			Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)				
<b>TOTAL:</b>	\$ -	\$ -					
<b>End Date</b>							
<b>Contractor Ownership</b> (complete only for base contracts with contract # prefix: FA or GR)							
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT disadvantaged			
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—				
<b>Contractor Selection Method</b> (complete for ALL base contracts— N/A to amendments or delegated authorities)							
<input checked="" type="checkbox"/> RFP	<input checked="" type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method					
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg,ID,GG,GU)	<input type="checkbox"/> Other					
<b>Procurement Process Summary</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)							
As a result of a competitive RFP process, NIKE is the selected contractor for the apparel revenue contract not to exceed a total of five (5) years. During competitive negotiations and based upon industry standards, NIKE included a potentially non-competitive provision that is essential to finalizing the contract. For 90 days after the conclusion of this contract, the provision allows NIKE to match the best bid response received when the services are re-bid in five (5) years. This provision also offers flexibility for the University by allowing the provision to expire after 90 days before a new bid is issued.							

**CONTRACT  
BETWEEN THE UNIVERSITY OF MEMPHIS  
AND  
NIKE USA, Inc.**

This Contract, by and between The University of Memphis, hereinafter referred to as the "University" and NIKE USA, Inc., hereinafter referred to as "NIKE," is for the provision of apparel, accessories, and footwear for each sponsored intercollegiate athletics program, support personnel, and support programs, along with monetary contributions as further defined in the "SCOPE OF SERVICES."

NIKE is a for-profit corporation. NIKE's address is:

NIKE USA, Inc.  
One Bowerman Drive  
Beaverton, OR 97005

NIKE's place of incorporation or organization is Oregon.

**A. DEFINITIONS:**

As used in this Contract, the terms set forth below shall be defined as follows:

- A.1. "Coach" shall mean an individual employed during the term of this Contract to act as a head coach of a Covered Program.
- A.2. "Coach Properties" shall mean the Coach's name, nickname, initials, autograph, facsimile signature, voice, video or film portrayals, photographs, likeness and image or facsimile image, or any other means of identification used by a Coach.
- A.3. "Contract Year" shall mean each consecutive twelve (12) month period from July 1 through June 30 during the term of this Contract.
- A.4. "Covered Program(s)" shall mean the following NCAA Division I varsity intercollegiate athletic programs that are fielded by University: football, men's basketball, women's basketball, men's soccer, women's soccer, volleyball, baseball, softball, men's track & field, women's track & field, men's cross country, women's cross country, women's golf, men's golf, men's tennis, women's tennis, rifle, and such other replacement or additional varsity intercollegiate athletic programs as may be established from time-to-time during the term hereof.
- A.5. "NIKE Group" shall mean NIKE USA, Inc., NIKE Retail Services, Inc. (d/b/a NikeTown), their parent company NIKE, Inc., wholly-owned subsidiaries of NIKE, Inc. (e.g, Converse Inc., Hurley International LLC, Umbro Ltd., Cole Haan), and exclusive licensees and distributors, of NIKE, Inc. or its wholly-owned subsidiaries and any successor companies thereto.
- A.6. "Products" shall mean:
  - (a) all athletic and athletically inspired or derived footwear that members of any of Team, Coaches and/or Staff wear or may be reasonably expected to wear while participating in a Covered Program activity;
  - (b) authentic competition apparel consisting of uniforms, sideline or courtside jackets and sweaters, game-day warm-ups, basketball shooting shirts, football player capes, wool and fitted caps, windsuits, rainsuits, sideline or courtside pants, shorts and shirts, and similar apparel, activewear, thermal wear and performance undergarments (collectively, "Authentic Competition Apparel") that members of any Team, Coaches and/or Staff wear or may be reasonably expected to wear while participating in a Covered Program activity;

- (c) all other apparel articles of an athletic or athleisure nature including but not limited to polo shirts, golf shirts, tank-tops, T-shirts, sweatsuits, separates and other body coverings, and accessories of an athletic or athleisure nature, including but not limited to headwear (other than protective headwear), headbands, wristbands, carrying and equipment bags, socks, hand-towels, football gloves, batting gloves, weight training gloves, elbow and knee pads that members of any Team, Coaches and/or Staff wear or use or may be reasonably expected to wear or use while participating in a Covered Program activity;
  - (d) footballs, men's basketballs, women's basketballs, soccer balls, volleyballs;
  - (e) baseball and softball bats, batting helmets, catcher's masks and helmets, chest protectors, and leg guards;
  - (f) golf clubs, golf balls and golf bags;
  - (g) non-prescription sunglasses, and protective and performance eyewear when available; and
  - (h) other sports equipment as NIKE may add to its Product lines at any time during the term of this Contract and in accordance with Section C.2.
- A.7. "NIKE Products" shall mean all Products in connection with which, or upon which, the NIKE name, the Swoosh Design, the NIKE AIR Design, the Basketball Player Silhouette ("Jumpman") Design or any other trademarks or brands (e.g., Brand Jordan, Converse, Umbro) now or hereafter owned and/or controlled by NIKE (collectively, "NIKE Marks") appear.
- A.8. "Staff" shall mean, collectively, all assistant coaches and strength coaches, equipment managers, trainers and any on-field/courtside staff (e.g., ballpersons, etc.) employed by University during the term of this Contract to provide services to any Covered Program.
- A.9. "Team" shall mean that group of student-athletes attending the Memphis campus of the University during the term of this Contract and comprising the roster of each Covered Program
- A.10. "University Marks" shall mean the identification University of Memphis, Memphis Tigers, and all other names, nicknames, mascots, identifications, trademarks, service marks, logographics and/or symbols, and any other recognized symbols associated with its athletic teams, and that are owned or controlled by the University.

**B. SCOPE OF SERVICES:**

- B.1. The University requested proposals from athletic apparel and footwear companies, for the purpose of providing apparel, accessories, and footwear for each sponsored intercollegiate athletics program, support personnel, and support programs, along with monetary contributions to the University of Memphis Foundation. After receiving proposals and careful review and analysis of the proposals, University has determined that NIKE submitted the best proposal in the interest of University; and accordingly grants NIKE the rights set forth below in this Section B and elsewhere in this Contract.
- (a) University hereby grants to NIKE, and NIKE hereby accepts, (i) the designation as "the exclusive athletic footwear, apparel and accessories supplier of University of Memphis Athletics", "the official supplier of the athletic footwear and apparel of (each Covered Program)" and "the official athletic footwear and apparel sponsor of (each Covered Program)", "the official supplier of the athletic footwear of (each Covered Program)", the official athletic footwear sponsor of (each Covered Program)" and/or such similar designations as the parties may agree upon (collectively, the "Designations"); and (ii) the right to utilize (subject to the approval provisions of Section K.5. below) the University Marks, the Coach Properties, that are controlled by the University, and the Designations worldwide, in any media (now known or hereafter created) including, but not limited to, the worldwide web, in connection with the manufacture, advertising, marketing, promotion and sale of NIKE Products. By way of examples illustrating the contemplated uses of the

Designations, during the football season and/or in football-related media NIKE would use the designation "The official supplier of the athletic footwear and authentic apparel products of Tiger Football", and during the basketball season and/or in basketball-related media NIKE would use the designation "The official supplier of the athletic footwear and authentic apparel products of Tiger Basketball", etc. Such rights shall specifically include, but shall not be limited to, the following:

- (1) The exclusive right to supply Products for the Covered Programs and to use the Designations subject to University approval in accordance with Section K.5.
  - (2) The right to manufacture and sell at retail Products bearing or incorporating University Marks (subject to the terms of University's standard retail licensing process, and further subject to Section F below), and to conduct promotions with and through NIKE retail accounts and over the Internet, subject to, where applicable, the rights of Learfield, Inc. d/b/a Tiger Sports Properties ("TSP") and Champion Awards, as well as any agreements entered into between NIKE and those entities.
  - (3) The right to use University-controlled game photographs ("Game Photos"), videotape and/or film footage ("Game Footage") relating to the Covered Programs, and other Athletic Department-controlled similar materials, and subject to applicable NCAA rules and regulations with respect to the depiction of eligible athletes. In connection therewith, at NIKE's request, University shall permit NIKE to utilize, consistent with this Section B, Game Photos and Game Footage (owned and/or controlled by University), without a use fee, other than reasonable search and edit charges.
- (b) NIKE acknowledges that University is party to pre-existing contracts with respect to product supply for the following Covered Programs:
- (1) University represents that set forth on Schedule A hereto is a true and complete listing of the supplied product and the expiration date of such contract. The parties hereto agree that upon the expiration of such contracts, the subject Products, program (and any Coach thereof, subject to expiration of any relevant personal services agreement) shall be deemed subject to all terms and conditions of this Contract for the balance of the Term provided NIKE matches the complimentary product quantities that University had then been receiving under the scheduled pre-existing contracts.
  - (2) University acknowledges that NIKE is party to a pre-existing contract with Coach West, and has entered into a contract with Coach Calipari, ("Product and Services Contracts") with respect to their personal services (e.g., personal publicity rights and appearances and, for Coach Calipari, also Products) in connection with the football and the men's basketball programs respectively, and the parties agree that the terms of this Contract shall not be deemed, or construed in any manner, to diminish any rights NIKE may have pursuant to such Product and Services Contracts.
  - (3) In addition to the foregoing, University (i) acknowledges it shall not enter into any oral or written agreement or take any other action during the term of this Contract which would be inconsistent with, or would prevent, limit or interfere with the performance of any obligations to NIKE under such Product and Services Contracts (lawful employment action(s) taken by the University with respect to Coaches shall not constitute a breach under this subsection; and (ii) represents that in the event of the expiration or termination of any Product and Services Contracts, or if either Coach ceases to be a head coach at University, the rights under the relevant Product and Services Contract, which revert to University, shall be granted directly by University to NIKE under the terms of this Contract and in such case the product supplied, and annual monetary contribution, under this Contract shall be incrementally increased by a corresponding amount.

B.2. University and NIKE desire to enter into this Contract for the purpose of NIKE having exclusive rights to provide NIKE brand apparel, accessories, and footwear needs, both training and competition, for use by the Covered Programs and the Athletics Department. NIKE shall also provide all men's apparel, accessories, and footwear needed by the men's head basketball coach through a separate contract with such Coach and which shall not effect the Product allotment under this Contract. University shall ensure that such supplied product is distributed and used in accordance with the provisions of this Section.

B.3. Use of NIKE Products.

- (a) Throughout the Term, and subject to the expiration of any pre-existing product supply contract with respect to a Covered Program as indicated in Schedule A and/or Conference/NCAA product use requirements (e.g., a Conference USA or NCAA game ball use agreement), University shall make NIKE Products available on an exclusive basis to all Covered Programs, to be worn and/or used by Team members, Coach and Staff during practices, games, exhibitions, clinics or sports camps (controlled by University), and other official or University sanctioned activities (including but not limited to photo sessions and interviews) during which Team members, the Coach and Staff wear and/or use Products. University shall require the Coach and Team and Staff members to wear and/or use exclusively NIKE Products during such activities. Notwithstanding the foregoing, NIKE acknowledges that (i) the wear and/or use of certain NIKE Products by certain Covered Programs is subject to the provisions of Sections B.1(b) (i.e., obligations under pre-existing contracts) and B.3(a)(iii)(1) through B.3(a)(iii)(3) (i.e., exceptions for personal equipment), (ii) Team members, Coaches and Staff may wear non-athletic footwear and apparel, as appropriate, in connection with official program activities (e.g., banquets or awards dinners, meetings, road game travel, etc.) and that the election to not wear NIKE Product for such activities shall not constitute a breach of this Section. NIKE further agrees to work with any Team member experiencing problems in connection with fit or performance of NIKE footwear or apparel, and (iii) notwithstanding NIKE's exclusive rights,
- (1) Members of the golf program shall have the right to use golf clubs and golf balls of their choice (but not any other golf equipment or products) from any manufacturer, and with such manufacturer's logo camera-visible, so long as no promotional benefit of any kind shall accrue to either the source of such item(s) or to University;
  - (2) Members of the baseball and softball programs shall have the right to use fielding gloves and bats of their choice (but not any other baseball equipment or products) from any manufacturer, and with such manufacturer's logo camera-visible, so long as no promotional benefit of any kind shall accrue to either the source of such item(s) or to University; and
  - (3) If during the term NIKE shall add tennis racquets to its product line, members of the tennis program shall have the right to use racquets of their choice (but not any other equipment) from any manufacturer, and with such manufacturer's logo camera-visible, so long as no promotional benefit of any kind shall accrue to either the source of such item(s) or to University.

For avoidance of doubt, the parties agree that University may source golf clubs, golf balls and fielding gloves and bats on a complimentary basis but cannot in exchange for such complimentary supply of product provide the supplier with any advertising or promotional rights, and such use shall not constitute a breach of this Section or this Contract.

- (b) University shall ensure that no Team member, Coach or Staff member shall:
- (1) Alter or permit the alteration of any NIKE Product worn or used by them to resemble a non-NIKE Product; or
  - (2) Wear any non-NIKE Products which have been altered to resemble NIKE Products.

- (c) University shall ensure that no Coach, Staff or Team member shall wear and/or use any athletic footwear, or other Products, manufactured by companies other than NIKE except as permitted in Section B.1(b) and B.3, above.
- (d) (1) University acknowledges that "spatting" or otherwise taping, so as to cover any portion of the NIKE footwear worn by members of the Team during practices, games, exhibitions, clinics, sports camps and other occasions during which Team members wear athletic shoes, is inconsistent with the purpose of this Contract and the benefits to be derived from it by NIKE and is a material breach of this Contract. (2) Notwithstanding the foregoing, isolated spatting or taping as is deemed to be a medical expediency when such determination is made in-game/in-training in response to a then-sustained injury shall not be deemed a breach of this Contract. By way of example illustrating the foregoing exception to (d)(1) above would be a decision to tape over a football cleat to get a player back into a game quickly after the player has rolled or sprained an ankle.
- (e) Other than the University Marks, University shall not permit (i) the trade name, trademark, name, logo or any other identification of any person, company or business entity other than NIKE to appear on NIKE Products worn or used by Coach, Staff or Team members, or (ii) any third party to screenprint upon, or otherwise embellish, any NIKE Product worn or used by Coaches, Staff or Team members.
- (f) In the event that any NIKE apparel or equipment product violates NCAA rules, NIKE agrees to work expeditiously with the University to provide a substitution for the offending product, but also agrees to allow the University to make alternative arrangements for such product (which must be non-branded in the case of apparel) if NIKE cannot provide a substitution in a timely manner. NIKE shall compensate the University for the cost of securing a substitute product.

**C. PRODUCT AMOUNTS, METHODS OF PRODUCT SUPPLY, AND DELIVERY OF PRODUCT:**

**C.1. In part consideration for the rights granted by University under this Contract:**

- (a) Each Contract Year, NIKE shall supply University with a mutually determined, sport-appropriate, product supply package of NIKE Product (consisting of footwear, apparel and such other products as agreed to by the parties) for use by (or in connection with) Team members, Coaches, Staff, Athletic Department personnel, the Covered Programs and associated University-controlled camps and/or clinics. The aggregate retail value (at NIKE's published retail value) of supplied product that Athletic Department may order for each Contract Year shall be as set forth in the table below (each, an "Annual Product Allotment").

1st Contract Year (2008-09)	\$1,500,000
2nd Contract Year (2009-10)	\$1,500,000
3rd Contract Year (2010-11)	\$1,500,000
4th Contract Year (2011-12)	\$1,500,000
5th Contract Year (2012-13)	\$1,500,000

Notwithstanding the above-stated Annual Product Allotments, (1) University shall be permitted a maximum carry-over of Two Hundred Thousand Dollars (\$200,000) of unordered annual allotment of merchandise from Contract Year 1 to Contract Year 2, and (2) for each subsequent Contract Year, University shall be permitted a maximum carry-over of One Hundred Thousand Dollars (\$100,000) of unordered annual allotment of merchandise from one Contract Year to the next; provided that for each Contract Year University desires to carry-over from the previous year's allotment, it shall so notify NIKE in writing of such desire (and the intended amount of carry-over) by no later than April 1st of the then-current Contract Year, and provided further that if the carry-over amount is not used in the Contract Year into which it has been carried, such carry-over amount shall be forfeited. (By way of example, if University desires to carry-over \$100,000 of its allotment

from Contract Year 2 into Contract Year 3, it must so notify NIKE of such desire by April 1, 2010, and if such carried over amount is not used by the conclusion of Contract Year 3 it shall be forfeited.)

(b) Each Contract Year,

(1) Provided University has then ordered at least 300 pairs of football shoes under its Annual Product Allotment for such year, University shall be entitled to (but not required to) order direct from NIKE, on a "2 for 1" basis, additional football shoes for team use and provided such additional order is placed at the same time University submits their annual order for the Products. For purposes of this subsection, "2 for 1" shall mean that for every two (2) pairs of football shoes purchased from NIKE, University shall receive from NIKE, free of charge, one (1) pair of football shoes. (By way of example illustrating the foregoing, if for the 2009 Season University has placed an initial order for 300 pairs of football shoes and to be credited against its Annual Product Allotment, then places a subsequent single purchase order that season for an additional 150 pairs of football shoes—University would pay published wholesale price for 100 pairs, and would receive 50 pairs free of charge.)

(2) Provided that University has then ordered at least 500 pairs of football gloves under its Annual Product Allotment for such year, University shall be entitled to (but not required to) order direct from NIKE, on a "1 for 1" basis, additional football gloves for team use and provided such additional order is placed at the same time University submits their annual order for the Products. For purposes of this subsection, "1 for 1" shall mean that for every pair of football gloves purchased from NIKE, University shall receive from NIKE, free of charge, one (1) pair of football gloves. (By way of example illustrating the foregoing, if for the 2009 Season University has placed an initial order for 500 pairs of football gloves and to be credited against its Annual Product Allotment, then places a subsequent single purchase order that season for an additional 200 pairs of football gloves—University would pay published wholesale price for 100 pairs, and would receive 100 pairs free of charge.)

(c) NIKE shall provide a project team to work with University representatives, which includes but is not limited to designers, developers, account managers, field reps, and sport category leads. NIKE shall provide quality products with consistency in color, marks and fonts that position the marketing strategy of the University for the future. The exact styles, sizes and delivery dates and, where appropriate, quantities of NIKE Products ordered under this Contract shall be mutually determined by NIKE and University for each such Contract Year. Each such Contract Year, if University desires quantities of NIKE Product in excess of that provided under its Annual Product Allotment, University may order and purchase such additional quantities of the NIKE Products at NIKE's published wholesale prices (or on terms as otherwise provided under Paragraph C.1(b) above), subject to availability and NIKE standard sales terms and conditions. In no event shall University purchase from any third-party any Products (including footwear and core basic apparel – e.g., T-shirts, shorts, fleece and socks) for Covered Program use. All Product to be supplied by NIKE hereunder shall be delivered F.O.B. destination to University. Only properly submitted orders from University's Athletic Business Office shall be filled by NIKE.

(d) University acknowledges that Annual Product Allotments shall be delivered to University generally one (1) month prior to the start of the regular season for each Covered Program and that annual allotments must typically be ordered 9-12 months in advance of each season to ensure timely delivery. Provided University places all its orders by the October 1 preceding any Contract Year, the annual product allotment for each Covered Program shall be delivered to University by the following dates during such Contract Year:

Football	August 1
Basketball	October 1



All other Fall Athletic Programs	August 15
All Spring Athletic Programs	
Basics	September 1
Uniforms	December 1

Notwithstanding the foregoing, however, if approved in writing by University (such approval not to be unreasonably withheld), certain products within a Covered Program's product allotment may be delivered later than the date specified above, depending on their date of actual use, furthermore, University acknowledges that, once apparel ordering deadlines have been met, product delivery may be staggered in accordance with a mutually agreed priority schedule. (By way of example, with respect to football product, footwear and practice wear would be delivered by July 1st, game uniforms by photo day, and cold weather wear by October 1st.) The parties further agree that:

- (1) When product is needed in a rush/emergency basis, NIKE field staff and an account manager will serve as a first point of contact and will be available to the University representative to determine needs, evaluate options and find product suitable for the situation.
- (2) Product for the University may be ordered in any number of ways, depending on the product, inventory availability and need. Generally, NIKE will meet with University representative on a seasonal basis to review styles/colors and ask for orders to be placed on the NIKE's "online order system" which will then be delivered to the University. In most instances, this evaluation and ordering will take place in the current season for the following year's use.
- (3) Further, in addition to long term planning mentioned in Section C.1(d) above, core styles may be ordered at any point during the year (basic shirts, fleece) that can be embellished which will then be delivered to the University.

#### C.2. Supply of New Products.

From time-to-time during the term of this Contract, NIKE may add to its Products line one or more items of sports equipment. If at any time during the Term NIKE shall have a bona fide intention to expand its Products line by adding any such item(s), then NIKE shall give University reasonable advance written notice of the particular item(s) then in development by NIKE and provide the relevant program with adequate opportunity to sample and field-test such product prior to the beginning of the relevant regular season. If, after good faith use and testing of such product, the relevant Coach is satisfied with the quality and performance of such new product in the exercise of such Coach's subjective reasonable judgment, once such item is commercially available, then such item(s) shall thereafter be deemed to be included in "Products" as defined in Section A.5. above and "NIKE Products" as defined in Section A.6 above and covered in all pertinent respects by the terms hereof and University shall no longer be permitted to source such Products from a manufacturer other than NIKE, after the expiration of any existing third party agreements for such products. Thereafter, University shall make such new Product item(s) available to Team members, Coaches and/or Staff members, NIKE shall supply University with sufficient quantities for such purpose to be mutually agreed upon by the parties, including quantities equal to or greater than the quantities of any comparable item(s) which University, Team members, Coaches and/or Staff members are then receiving from a third-party, and University shall thereupon distribute, as is appropriate, such new item(s) to Team members, Coaches and/or Staff members for use pursuant to the terms of this Contract and the Annual Product Allotment shall be increased accordingly. For purposes of this provision, the parties agree that the fact such product is being used successfully by other elite-level collegiate teams (e.g., the product has been adopted and is then being used by a number of "Top 20" teams), and professional athletes shall be *prima facie* evidence that such product meets prevailing reasonable quality and performance standards for such item.

D. CONTRACT TERM:

- D.1. Contract Term. This Contract shall be effective for the period commencing upon execution by both parties and ending on June 30, 2013, or not to exceed a total of 60 months depending on the start date (the "Term"). The University reserves the right to cancel the Contract if sufficient funding for its continuance is not appropriated by the General Assembly of the State of Tennessee. The University shall have no obligation for services rendered by the NIKE which are not performed within the specified period.

E. OTHER FINANCIAL ARRANGEMENTS AND MONETARY CONTRIBUTION:

- E.1. Compensation Firm. The product allotment, monetary contribution, and commitment bonus contribution under this Contract are firm for the duration of the Contract and, except as provided under Sections B.1(b), C.1(a), C.2 and E.2(e) of this Contract, are not subject to change for any reason unless this Contract is amended.

- E.2. Monetary Contribution Amounts & Methodology. The University shall receive monetary contribution based upon the following:

- (a) Annual Contribution. Each Contract Year, NIKE shall make a monetary contribution to the University in the amount set forth below opposite the indicated Contract Year, to be paid in two (2) equal semi-annual installments to be made on July 1 and January 1 of each Contract Year. Such contributions shall be made in the same manner as other contributions made for the benefit of the University of Memphis Athletic Program.

1st Contract Year (2008-09)	\$660,000
2nd Contract Year (2009-10)	\$660,000
3rd Contract Year (2010-11)	\$660,000
4th Contract Year (2011-12)	\$660,000
5th Contract Year (2012-13)	\$660,000

- (b) Commitment Bonuses. In consideration of the Universities signing of this Contract, NIKE shall pay University a commitment bonus contribution in the amount of Five Hundred Thousand Dollars (\$500,000) within thirty (30) days of full execution of this Contract.
- (c) In addition to the product allotment noted above, NIKE shall provide \$10,000 each year for product specifically designated for the Ambassador level donors at the University of Memphis.
- (d) NIKE shall also sponsor the Tiger Athletic Classic golf tournament by providing product and prizes in connection with the tournament.
- (e) Should there be a change in the University's Head Coach of Men's Basketball, the monetary contribution above shall change to \$400,000 per year for the remainder of the contract term.

- E.3. Travel Compensation.

NIKE shall not be compensated or reimbursed for travel, meals, or lodging.

F. RETAIL LICENSING RIGHTS:

- (a) University shall cause its licensing agent (currently the Collegiate Licensing Company "CLC") to negotiate with NIKE, grant and maintain a retail license agreement to be coterminous with this Contract, and NIKE shall work cooperatively with CLC and the University to implement a retail license agreement that:

- (1) Extends to NIKE (and its affiliated brands, whether directly owned by NIKE or licensed to it, e.g., Brand Jordan, Converse, Umbro) the exclusive right to use the University Marks to manufacture and sell domestically at retail, and in any and all channels, all (1) Authentic Competition Apparel, and (2) jersey silhouettes (e.g.,

authentic, alternative jerseys, replica jerseys, throwback jerseys, etc.) for the Basketball and Football Covered Programs (collectively, "Licensed Products") at a fixed royalty rate of eleven percent (11%).

- (2) Extends to NIKE (and its affiliated brands, whether directly owned by NIKE or licensed to it, e.g., Brand Jordan, Converse, Umbro) the non-exclusive right to use the University Marks to manufacture and sell at retail, and in any and all channels, such other Products as NIKE may from time-to-time request be added under the license, at a fixed royalty rate of ten percent (10%).
- (b) During the Term, neither University nor CLC shall grant or permit others to grant licenses to, or allow any of the following brands or entities (including their parent, subsidiary, and affiliated companies) to hold licenses for the use of the Licensed Marks on Products in any territory: adidas, Reebok, Puma and UnderArmour.

**G. NIKE'S SPONSOR BENEFITS:**

During the Term, in connection with the Covered Programs, University shall provide NIKE with the following promotional benefits at no additional cost to NIKE except as otherwise indicated or, if not controlled by University, shall facilitate the purchase of such benefits through TSP:

- G.1. Each Contract Year, upon reasonable prior notice and subject to any coaching commitment and/or applicable University policy, if so requested by NIKE, University shall make each Coach available for one (1) appearance (but specifically excluding Coaches West and Calipari whose appearances are provided to NIKE under the terms of their respective Services Contract). No single appearance shall exceed twenty-four (24) hours in duration, including travel time, unless otherwise agreed upon in advance. Such appearances may include, but are not limited to, photo shoots for posters, brochures or in-store displays, production sessions related to filming commercials and/or video productions and/or advertising, retail store appearances, trade shows, speaking engagements, appearances at sports clinics, celebrity events and other public appearances. University shall receive no additional compensation for such appearances. NIKE agrees to pay all reasonable and necessary out-of-pocket expenses incurred by any Coach in connection with any appearance hereunder, including first class airfare
- G.2. NIKE shall receive season tickets to home games (and neutral site games as indicated below) for each Covered Program in accordance with the following:

PROGRAM	No. TICKETS*
Football (home)	8 (in block seats) + 2 V.I.P parking passes
Football (if University participates in game, Conference Championship)	6
Bowl Game in which University participates	6 + others if available*
Basketball (M)	8 (adjacent seats or blocks of 4, using best efforts) + 2 V.I.P parking passes
Basketball Tournament (M) (Conference & NCAA or NIT, if applicable)	8 (seats per round) + others if available*
Basketball (W)	6 (adjacent seats)
Basketball Tournament (W) (Conference & NCAA or NIT, if applicable)	8 (per round, adjacent seats)
Other Ticketed Programs	4 (adjacent seats)
* All tickets shall be best available lower-level seating, adjacent seats, using best efforts. Other available tickets may be made available to NIKE for purchase at face-value.	

In addition to the foregoing 8 basketball tickets, each Contract Year, University shall provide NIKE with a block of twenty-two (22) tickets (best available location), for a total of 30 tickets, to one mutually agreed and designated men's home basketball game.

- G.3. For additional compensation from Nike through TSP, prominent, camera-visible, University-controlled signage in its football stadium, with the placement and size of such signage to be mutually agreed upon.
- G.4. At each home football and basketball game, suitable in-game P.A. announcements and/or electronic board messages recognizing NIKE as the exclusive Products supplier and sponsor of the University's athletic program.
- G.5. For additional compensation from Nike where controlled by TSP, prominent NIKE name and/or logo recognition in all sports-related publications or other media published by University.
- G.6. For additional compensation from Nike through TSP, one full-page, 4-color NIKE advertisements (camera-ready ad to be produced and provided by NIKE at its cost) in the football game day program, and also in the basketball game programs that are published from time-to-time during the basketball season.
- G.7. For additional compensation from Nike through TSP, such rights or benefits with regard to the gotigersgo.cstv.com (the "Athletics Web Site") as are consistent with those that University has granted to other commercial, University sponsors or licensees, and University represents that with regard to the Athletics Web Site, it shall not treat NIKE less favorably than any other commercial sponsor or commercial entity to which University has granted any rights with respect to the Athletics Web Site. In addition to the foregoing, if requested, NIKE will receive the opportunity, as is consistent with those that University has granted to other commercial University sponsors or licensees, to create a link from the Athletics Web Site to a NIKE Web Site. The appearance, location and size of the acknowledgement and the link shall be subject to final determination by University and in accordance with University policy.
- H. NIKE acknowledges that any recognition, name or logo identification, statement or acknowledgement provided by University under this Contract shall comply with the requirements of 26 USC 513 or other applicable law or regulations to qualify the payment to the University as a "qualified sponsorship payment" and as such NIKE shall not have the right to display a message that contains a comparative or qualitative description of NIKE Product, price information or other indications of savings or value, a sponsorship, or an inducement to purchase, sell or use NIKE Product. All copy and graphics proposed for display by NIKE are subject to reasonable approval by the University. All such recognition is subject to and shall comply with all NCAA rules and regulations.
- I. TRADEMARKS:
- (1) NIKE recognizes the value of the University Marks and acknowledges that the goodwill attached thereto belongs to University and that nothing in this Contract serves to assign, convey or transfer to NIKE any rights, title or interest in or to the University Marks.
- (2) University recognizes the value of the NIKE Marks and acknowledges that the goodwill attached thereto belongs to NIKE and that nothing in this Contract serves to assign, convey or transfer to University any rights, title or interest in or to the NIKE Marks.
- J. TERMS AND CONDITIONS:
- J.1. Required Approvals. The University is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations as shown on the signature page of this Contract.
- J.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials.
- J.3. Termination for Cause.
- (a) University Rights of Termination for Cause. University shall have the right to terminate this Contract immediately upon written notice to NIKE if:

- (1) NIKE is adjudicated insolvent or declares bankruptcy;
- (2) NIKE fails to make payment to UNIVERSITY of any sum due pursuant to this Agreement within thirty (30) days following NIKE's receipt of written notice from UNIVERSITY that such payment is past due
- (3) NIKE breaches any other material provision of this Contract, which breach NIKE fails to cure within thirty (30) days of NIKE's receipt of written notice from University specifying the breach; or
- (4) Any act or omission of NIKE causes University, a Team member, Coach, or Staff to be in violation of any NCAA rule or regulation resulting in NCAA sanctions against the University, a Team member, Coach or Staff.

Notwithstanding the above, NIKE shall not be relieved of liability to the University for damages sustained by virtue of any breach of this Contract by NIKE and University shall have available the remedy of actual damages and any other remedy available at law or equity.

(b) **NIKE Rights of Termination for Cause.** NIKE shall have the right to terminate this Contract immediately upon written notice to University if:

- (1) The men's basketball team is banned from television or post-season appearances or University ceases for any reason to field such a team;
- (2) Coach, Staff and/or Team members fail to wear or use NIKE Products as required under Section B.3, or wear NIKE Products altered in violation of the provisions of Section B.3 above; provided, however, that NIKE shall have first provided written notice to University of any such violation and such violation shall then recur during the same Contract Year ;
- (3) Any Coach or Staff members materially fail to perform any material obligations provided for in this Contract;
- (4) Any member of the Athletic Department administration (including Coach or Staff) publicly disparages the quality and/or performance of NIKE Products; or
- (5) University is in material breach of this Agreement or is in material breach of any material term of this Contract, which breach University fails to cure, if curable, within thirty (30) days of NIKE's delivery of written notice to University of any such breach.

J.4. **Subcontracting/Assignment.** NIKE shall neither assign this Contract outside of the NIKE Group nor enter into a subcontract for any of the services performed under this Contract (other than the manufacture of product) without obtaining the prior written approval of the University. If such subcontracts are approved by the University, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination". Notwithstanding any use of approved subcontractors, or permitted assignment within the NIKE Group, NIKE shall be the prime contractor and shall be responsible for all work performed and the guarantor of all performances of any assignee.

J.5. **Conflicts of Interest.** NIKE warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to NIKE in connection with any work contemplated or performed relative to this Contract.

J.6. **Nondiscrimination.** NIKE hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of NIKE on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or State constitutional or statutory law. NIKE shall, upon request, show proof of such

nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- J.7. Prohibition of Illegal Immigrants. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contactor attest in writing that it will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated by this reference as Attachment 1. If NIKE is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that NIKE shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. NIKE may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.
- J.8. Records. NIKE shall maintain documentation for all charges against the University under this Contract. The books, records, and documents of NIKE, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to annual audit (at such NIKE location as such records are regularly maintained) at any reasonable time and upon reasonable notice by the University, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- J.9. Progress Reports. The Contractor shall submit, as requested, NIKE's standard financial statement which shows product ordered to date and the cost of such ordered product against the Annual Product Allotment.
- J.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- J.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. NIKE, being an independent contractor and not an employee of the University, agrees to carry adequate liability and other appropriate forms of insurance on NIKE's employees, and to pay all applicable taxes incident to this Contract.
- J.12. University Liability. The University shall have no liability except as specifically provided in this Contract.
- J.13. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- J.14. State and Federal Compliance. NIKE shall comply with all applicable State and Federal laws and regulations, including University policies and guidelines in the performance of this Contract.
- J.15. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. NIKE agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. NIKE

acknowledges and agrees that any rights or claims against the University or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.

J.16. Severability. If any terms or conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

J.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

K. ADDITIONAL TERMS AND CONDITIONS:

K.1. Communications and Contacts.

The University:

Mr. Bill Lofton, Associate Director, Athletics  
The University of Memphis  
570 Normal  
Memphis, TN 38152  
Telephone: 901-678-2453  
Facsimile: 901-678-1653  
Email: wlofton@memphis.edu  
With copy to University Counsel  
Facsimile: 901-678-3489

NIKE:

Director, College Sports Marketing  
NIKE USA, Inc.  
One Bowerman Drive  
Beaverton, OR 97005  
Telephone: 503-671-6453  
Facsimile: 503-671-6300  
With copy to NIKE Legal: Attn., Contract Specialist  
Facsimile: 503-646-6926

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. Changes to the Contract shall not be effective until agreed to, in writing, by both parties.

K.2. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the University reserves the right to terminate the Contract upon written notice to NIKE. Termination under this Section K.2 shall not be deemed a breach of Contract by the University. Upon receipt of the written notice, NIKE shall cease all work associated with the Contract. Should such an event occur, NIKE shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, NIKE shall have no right to recover from the University any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

K.3. Representations. University represents that, in connection with the Covered Programs:

- (a) To its knowledge as of the date hereof, and except as otherwise set forth in Schedule A of this Contract, neither University, Coach nor any Staff member is party to any oral or written

agreement, contract or understanding which would prevent, limit or hinder the performance of any obligations hereunder of University, Coach or any Staff member. University further represents that during the Term University shall not:

- (1) Sponsor, endorse or allow any Coach or any Staff member to sponsor, endorse or wear and/or use athletic footwear or other Products sold by any manufacturer or seller other than NIKE; or
  - (2) Enter into, or allow any Coach or any Staff member to enter into, any endorsement, promotional, consulting or similar agreement in connection with the Covered Program activities contemplated hereunder (including the sale of signage or other media) with (i) any manufacturer or seller of golf balls, golf clubs or other golf products other than NIKE (or allow a Coach or any Staff member to enter into any such agreement), or (ii) any manufacturer or seller of Products other than NIKE, or allow any Coach or any Staff member to enter into any such agreement with any person or entity other than NIKE that manufactures, sells, licenses or is brand-identified to athletic footwear or apparel;
- (b) University and NIKE each represent that it has the full legal right and authority to enter into and fully perform this Contract in accordance with its terms.

K.4. Inventory/Equipment Control.

NIKE shall maintain a perpetual inventory system for the supply and re-order of all equipment, apparel, accessories and footwear obtained under this Contract.

K.5. Advertising Approvals. NIKE shall not refer to this Contract or NIKE's relationship with the University hereunder in commercial advertising in such a manner as to state or imply that NIKE or NIKE's services are endorsed, without the express written approval of the University.

- (a) In the event NIKE desires to use the University Marks in any consumer advertising or promotion, NIKE shall first submit a sample or the concept of the proposed advertisement or promotion to University for approval, which approval shall not be unreasonably withheld. University shall use its best efforts to advise NIKE of its approval or disapproval of the sample or concept within ten (10) business days of its receipt thereof. University's approval, or disapproval, shall be in writing. (If a submission is disapproved, University's written notice thereof shall set forth in reasonable detail the basis for such disapproval.) Any submitted item that has not been disapproved within fifteen (15) calendar days of receipt by University shall be deemed approved. Once a submitted sample or concept is approved, NIKE shall not depart therefrom in any material respect without re-submission of the item and obtaining University's further approval.
- (b) In the event University desires to use the NIKE Marks in any advertising or promotion, University shall first submit a sample or the concept of the proposed advertisement or promotion to NIKE for approval, which approval shall not be unreasonably withheld.

K.6. Hold Harmless. NIKE agrees to indemnify and hold harmless the University as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of NIKE, its employees, or any person acting for or on its or their behalf relating to this Contract. NIKE further agrees it shall be liable for the reasonable cost of attorneys for the University in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of NIKE to the University.

In the event of any such suit or claim, NIKE shall give the University immediate notice thereof and shall provide all assistance required by the University in the University's defense. The University shall give NIKE written notice of any such claim or suit, and NIKE shall have full right and obligation to conduct NIKE's own defense thereof. Nothing contained herein shall be deemed to



accord to NIKE, through its attorney(s), the right to represent the University in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

K.7. Debarment and Suspension. NIKE certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
- (b) Have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification provided with NIKE's RFP response; and
- (d) Have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

K.8. Right of First Dealing and First Refusal. NIKE shall have a right of first dealing and first refusal as follows:

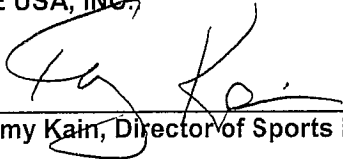
- (a) At NIKE's request, University shall negotiate with NIKE in good faith with respect to the terms of a renewal of this Contract, which shall be subject to review and approval by the Tennessee State Fiscal Review Contract subcommittee. The parties shall not be obligated to enter into an agreement if they cannot settle on mutually satisfactory terms. Prior to January 1, 2013 (the "Exclusive Negotiating End Date"), University shall not engage in discussions or negotiations with any third party regarding product supply with respect to any Products, or sponsorship of any Covered Program (or similar supply or promotional arrangement) with respect to any Products, ("Product Supply/Endorsement") to become effective upon expiration of this Contract.
- (b) During the Term and for a period of ninety (90) days thereafter, NIKE shall have the right of first refusal for Product Supply/Endorsements, as follows: If University receives any bona fide third party offer at any time on or after the Exclusive Negotiating End Date with respect to any Product Supply/Endorsements, and University finds such offer acceptable to it such that it is prepared to enter into an agreement on such terms, University shall submit to NIKE in writing the specific terms of such bona fide third party offer in the form of a true copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by NIKE as having originated with such third-party offeror. NIKE shall have fifteen (15) business days from the date of its receipt of such true copy of the third party offer to notify University in writing if it will enter into a new contract with University on terms no less favorable to University than the material, measurable and matchable terms of such third party offer. If NIKE so notifies University within such 15-day period, University shall enter into a contract with NIKE on the terms of NIKE's offer. If NIKE fails or declines to match or better the material, measurable and matchable terms of such third party offer within such 15-day period, University may thereafter consummate an agreement with such third party on the terms of the offer made to University. Prior to the Exclusive Negotiating End Date, University shall not solicit, consider or present to NIKE, and NIKE shall not be obligated to respond to, any third party offer for any Product Supply/Endorsements.

K.9. Confidentiality. University shall not (nor shall it permit or cause its employees, agents or representatives to) disclose the financial terms of this Contract, the marketing plans of NIKE, or

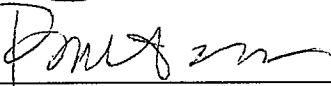
other confidential material or information disclosed to University (including information disclosed during audit), to any third-party except to the Tennessee Board of Regents or as may be required under the Tennessee Public Records Act.

IN WITNESS WHEREOF:

NIKE USA, INC.,

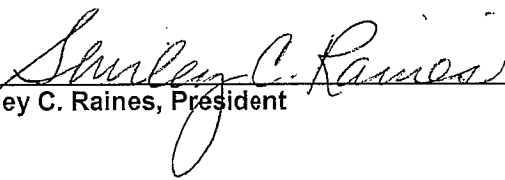
  
Tommy Kain, Director of Sports Marketing

11/18/08  
Date November 18, 2008

  
Peter H. Koehler, Jr., Regional Counsel

11/18/08  
Date November 18, 2008

THE UNIVERSITY OF MEMPHIS:

  
Shirley C. Raines, President

11/19/08  
Date

APPROVED:

TENNESSEE BOARD OF REGENTS:

Charles W. Manning, Chancellor

Date

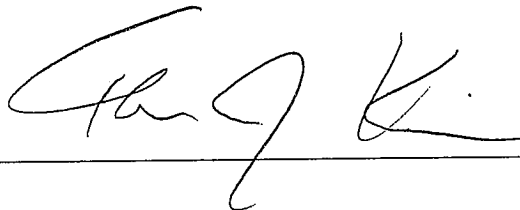
ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

NIKE USA, Inc., identified above, does hereby attest, certify, warrant, and assure that NIKE shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

 11/18/08

**SCHEDULE A**  
**Pre-existing Contract**

<b>PROGRAM</b>	<b>SUPPLIED PRODUCT</b>	<b>SUPPLIER NAME</b>	<b>CONTRACT EXPIRATION</b>
Baseball/Coach Schoenrock	Bats	Louisville Slugger	June 30, 2009
Baseball/Coach Schoenrock	Balls	Rawlings	Conference contract
Basketball/Coach Calipari	Balls	Spalding	June 30, 2010
Softball/Coach Thees	Bats	Easton	June 30, 2009
Men's golf/Coach Robbins	Clothing	Page and Tuttle	June 30, 2009
Athletic department	Towels	Pepsi/Gatorade	Ongoing
Football/Coach West	Apparel and equipment	NIKE	January 31, 2009